



FH  
[REDACTED]

**STATE OF WISCONSIN  
Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

[REDACTED]

[REDACTED]

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**PRELIMINARY RECITALS**

Pursuant to a petition filed November 06, 2014, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Division of Health Care Access and Accountability in regard to Medical Assistance, a hearing was held on December 17, 2014, at Racine, Wisconsin.

The issue for determination is whether evidence has been submitted on behalf of Petitioner that is sufficient to demonstrate that a prior authorization request for a speech language therapy (SLT) meets the criteria necessary for payment by the Wisconsin Medical Assistance Program.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By: Written submission of Theresa Walske, MS, CCC-SLP  
Division of Health Care Access and Accountability  
1 West Wilson Street, Room 272  
P.O. Box 309  
Madison, WI 53707-0309

**ADMINISTRATIVE LAW JUDGE:**

David D. Fleming  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Racine County.
2. A prior authorization (PA) request seeking speech language therapy (SLT) for Petitioner was filed by provider, Medical Support Services, Inc. on or about September 24, 2014. That PA sought Medicaid payment for 52 SLT sessions at a frequency of twice per week commencing September 16, 2014. The cost was noted to be \$6760.00.

3. Petitioner is 5 years of age (DOB 7/19/09). The PA form notes, in the diagnosis section, OT symbolic dysfunction as the primary diagnosis. She lives at home. She is in half day K-5. She does receive speech language therapy services through the school system during the school year.
4. The PA noted at Finding of Fact # 2 was denied as not being medically necessary and because it did not meet other requirements of State law found at *Wis. Admin. Code, DHS, §107.02(e) and DHS §107.18 (3)*. More specificity is provided in Exhibit # 3 – a November 18, 2014 letter from the OIG and authored as noted under Parties in Interest, above.

### **DISCUSSION**

The Division of Health Care Access and Accountability may only reimburse providers for medically necessary and appropriate health care services and equipment listed in Wis. Stat. §§ 49.46(2) and 49.47(6)(a), as implemented by Wis. Admin. Code, Ch. DHS 107. Some services and equipment require submission and approval of a written prior authorization request by the provider. Some services and equipment are never covered. Speech language therapy is a service that requires approval of a request for prior authorization. *See, generally, Wis. Admin. Code, DHS §107.18*. A PA is required after 35 lifetime SLT sessions. *Wis. Admin. Code, DHS, §107.18(3)*.

When determining whether to approve any prior authorization, the Division of Health Care Access and Accountability (DHCAA) must consider the generic prior authorization review criteria listed at *Wis. Admin. Code, DHS § 107.02(3)(e)*. Those criteria are:

(e) *Departmental review criteria*. In determining whether to approve or disapprove a request for prior authorization, the department shall consider:

1. The medical necessity of the service;
2. The appropriateness of the service;
3. The cost of the service;
4. The frequency of furnishing the service;
5. The quality and timeliness of the service;
6. The extent to which less expensive alternative services are available;
7. The effective and appropriate use of available services;
8. The misutilization practices of providers and recipients;
9. The limitations imposed by pertinent federal or state statutes, rules, regulations or interpretations, including medicare, or private insurance guidelines;
10. The need to ensure that there is closer professional scrutiny for care which is of unacceptable quality;
11. The flagrant or continuing disregard of established state and federal policies, standards, fees or procedures; and
12. The professional acceptability of unproven or experimental care, as determined by consultants to the department.

The Wisconsin Administrative Code does define the term ‘medical necessity’. It is a service that:

“Medically necessary” means a medical assistance service under ch. DHS 107 that is:

- (a) Required to prevent, identify or treat a recipient's illness, injury or disability; and
- (b) Meets the following standards:
  1. Is consistent with the recipient's symptoms or with prevention, diagnosis or treatment of the recipient's illness, injury or disability;
  2. Is provided consistent with standards of acceptable quality of care applicable to the type of service, the type of provider, and the setting in which the service is provided;
  3. Is appropriate with regard to generally accepted standards of medical practice;
  4. Is not medically contraindicated with regard to the recipient's diagnoses, the recipient's symptoms or other medically necessary services being provided to the recipient;
  5. Is of proven medical value or usefulness and, consistent with s. HFS 107.035, is not experimental in nature;
  6. Is not duplicative with respect to other services being provided to the recipient;
  7. Is not solely for the convenience of the recipient, the recipient's family, or a provider;

8. With respect to prior authorization of a service and to other prospective coverage determinations made by the department, is cost-effective compared to an alternative medically necessary service which is reasonably accessible to the recipient; and
9. Is the most appropriate supply or level of service that can safely and effectively be provided to the recipient.

*Wis. Admin. Code, §DHS 101.03(96m).*

As with most public assistance benefits the initial burden of demonstrating eligibility for any particular benefit or program at the operational stage falls on the applicant, *Gonwa v. Department of Health and Family Services*, 2003 WI App 152, 265 Wis.2d 913, 668 N.W.2d 122 (Ct.App.2003). In other words, it is Petitioner's burden to demonstrate that s/he qualified for the requested speech and language services by a preponderance of the evidence. It is not the OIG's burden to prove that s/he is not eligible. Further, I note that Medicaid is meant to provide the most basic and necessary health care services at a reasonable cost to a large number of persons and must authorize services according to the Wisconsin Administrative Code definition of medical necessity and other review criteria noted above.

Both the Department and the provider submitted quite lengthy and detailed written arguments, Exhibit #s 3 and 4, respectively. They are in the record and need not be reproduced here in detail. As I understand the Department's explanation/rationale it denied the PA because of lack of demonstrated progress and because Petitioner receives SLT in school and the PA request did not demonstrate the need for services from both. I do note that the Department was under the impression that Petitioner receives SLT of some sort through Children's Hospital of Wisconsin but the provider notes that CHW has referred Petitioner for services but does not provide them; I agree with provider – there is no evidence that SLT services are provided by CHW.

I am declining to reverse this denial of this prior authorization.

The Department notes that therapy services cannot be extended where there has been no progress over six months:

...

(e) *Extension of therapy services.* Extension of therapy services shall not be approved in any of the following circumstances:

1. The recipient has shown no progress toward meeting or maintaining established and measurable treatment goals over a 6-month period, or the recipient has shown no ability within 6 months to carry over abilities gained from treatment in a facility to the recipient's home;

...

*Wis. Adm. Code, § DHS 107.18(3)(e)1.*

While the Department argues that there has been no progress, the provider and Petitioner's mother note that Petitioner has made some progress. Petitioner's mother testified that Petitioner is less frustrated because she does understand more so there has been progress. A chart prepared by the Department that compares Petitioner's progress towards goals for the periods of 4/11/14 – 7/11/14 and 7/11/14 – 10/19/14 does show progress towards the goal of identifying familiar items by gazing at them, nonetheless, as the Department points out – this is with maximum cueing and does not demonstrate any functional progress. Further, I note that the detail as to how this was measured is lacking – was it on one day or is it at home or in a controlled setting, etc.

Another factor noted by the Department as a basis for the denial is duplication of services. It found no need for both school and private therapy. (Again, there is no evidence of therapy through CHW.) It could not find that Petitioner has deficits that could not be addressed by school therapy. The provider notes that school based SLT focuses on the needs of school and that the private therapy addresses SLT as it relates to social relationships. At 5 years of age, Petitioner's school activity is social – learning to play with others, learning to follow instructions, respond to questions with a yes or no and the like.

The arguments advanced by the Department are the more persuasive, there is a lack of progress and the services are duplicative. Thus this PA does not meet the medical necessity tests required for expenditure of Medicaid funds.

Finally, I note that a recipient of Medicaid may not be held liable for payment for services which require prior authorization unless informed of liability before the service was provided. *Wis. Adm. Code, § DHS 104.01(12)(c)*.

The provider will not receive a copy of this Decision. Petitioner's family may provide a copy of this Decision to the provider.

### **CONCLUSIONS OF LAW**

That the evidence presented on behalf of Petitioner is not sufficient to demonstrate that this prior authorization request for speech language therapy meets the criteria necessary for payment by the Wisconsin Medical Assistance Program.

**THEREFORE, it is**

### **ORDERED**

That this appeal is dismissed.

### **REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

### **APPEAL TO COURT**

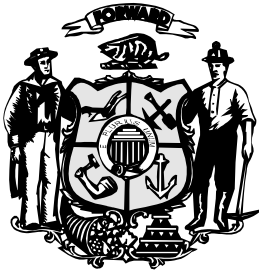
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 3rd day of February, 2015

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\sDavid D. Fleming  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on February 3, 2015.

Division of Health Care Access and Accountability